

(S. B. 1534)  
(Conference)

**(No. 168-2020)**

(Approved December 30, 2020)

## **AN ACT**

To amend Sections 1.3, 2.1, 2.3, 2.8, 3.1, 3.3, 3.9, 3.12, and 3.13 of Act No. 81-2019, known as the “Government of Puerto Rico Gaming Commission Act,” in order to make technical amendments to said Act; and for other related purposes.

### **STATEMENT OF MOTIVES**

On October 1992, the United States Congress passed the Professional and Amateur Sports Protection Act (PASPA) to prohibit sports betting throughout the United States. Although the ban did not eliminate unlawful betting, it did prevent the states and its territories from regulating the industry. In *Murphy v. National Collegiate Athletic Assn.*, 584 U.S.; 138 S.Ct. 1461 (2018), twenty-five (25) years after the approval of PASPA, the Supreme Court of the United States held said legislation unconstitutional, which prompted many states to approve legislation to legalize sports betting in their respective jurisdictions.

Since day one, our Administration has been proactive in the implementation of what has been our pragmatic commitment as established in the Plan for Puerto Rico. In the Plan, we recognized the need to begin an innovative government undertaking that facilitates economic development by providing Puerto Ricans with greater access to opportunities that strengthen the Island’s business sector, and which positions Puerto Rico as a world-class destination. Guided by such principles and commitments, we saw an opportunity within the new juridical

situation resulting from the opinion issued by the U. S. Supreme Court, for Puerto Rico to adopt new trends and achieve the desired development under the parameters of innovation, creativity, and viability, without imposing new taxes. Consequently, the Government of Puerto Rico Gaming Commission Act (hereinafter, the Commission Act) was precipitously approved, which authorized sports and eSports betting as well as all that pertains to Fantasy Contests within our jurisdiction, whether in person in authorized locations or through mobile applications and the Internet.

The effect of this Act is not only to allow for the emergence of new industries and businesses that create jobs, but also to create new revenue sources to support government programs and essential services programs such as: the pension plan, the Puerto Rico Police, the Municipal Improvement Fund, sports development programs, My Future accounts for children's education, and for the Compulsive Gamblers Assistance Program of the Mental Health and Addiction Services Administration (ASSMCA, Spanish acronym). Our government vision is to implement these initiatives in order to create a socioeconomic transformation model for Puerto Rico that sensibly and effectively addresses the essential needs of our People while designing a route towards progress. With this model, the private sector is positioned as the leader of the Island's development and economic recovery with the State acting as the principal facilitator in order to build a new Puerto Rico together.

Consequently, the public policy outlined in the Gaming Commission Act is directed towards opening the market, making it more flexible and taking aggressive actions to authorize betting in order to present the Island as a destination that is ready to do business, position Puerto Rico at the forefront of innovation, and activate the economy by creating direct and indirect jobs through new industries. By authorizing bets in more locations, we could affirm that the

approval of this measure would create over four hundred (400) direct and indirect jobs in areas such as technology, construction, hospitality, the food and beverage industries, and the event industries, among others. However, despite keeping the public policy in effect, the changes made to the legislation during the legislative process, prevented such policy from achieving its purpose by establishing procedural barriers in the licensing of certain locations despite the fact that its original intent was to provide authorization to accept sports bets and pay out winnings as Licensed Operators.

This legislation proposes to amend the Act in order to provide a vehicle for economic transformation and openness so that new Puerto Ricans can become part of Puerto Rico's workforce while keeping in mind that, in the Plan for Puerto Rico, we pledged to strengthen local businesses and create a new group of business owners with a robust and long-term sustainable market.

The economic challenges faced by the State impact the daily lives of our citizens and imposes on us public officials and employees the duty to build a better Puerto Rico, the responsibility of redistributing opportunities, and the obligation to become the facilitator of their dreams while they become the architects of their own destiny. Therefore, although the approval of the Gaming Commission Act was an important and progressive step, it is necessary to amend it for its effective implementation.

Pursuant to the foregoing, it is important to clarify that this openness policy toward the new betting industry in Puerto Rico must be accompanied, as a *sine qua non* requirement for its existence in the Island, by rigorous security parameters and standards that prevent the participation of minors, money laundering, and tax evasion. These legitimate concerns with regards to the industry's dynamics are and will always be the driving force whereby we shall organize the legal and regulatory framework of new economies that the Act makes feasible. The economic

development we seek through the approval of such legislation may not impair the safety and integrity of our People, and much less, or our youth. Therefore, this Administration proposed legislation which makes a new industry feasible, but included principles for stringent regulation and transparency.

Among the protection measures included in the Act, and consistent with the strictest international legal safeguards against money laundering, as a requirement prior to placing a bet, the player shall be duly registered and the Gaming Commission is directed to requires Operator license applicants to install technology systems that enable player identification, as well as the player's financial capacity to detect suspicious betting patterns, or if players are betting beyond their financial capacity. Proper player identification is the cornerstone of responsible gaming, since it prevents fraud and minors from having access to betting modalities. For such reason, everything pertaining to player identification shall be rigorously assessed so it cannot be circumvented when placing bets.

The protections originally provided by the Act were amended to not just allow in-person registration at any location authorized as a Principal Operator, but also online over the Internet and digital platforms. The foregoing weakens the oversight and security structure provided in the original legislation, which was recommended based on the experiences that other countries have had with this industry. The Digital Age in which we live in provides great opportunities as well as formidable challenges. The immediacy and ease with which we can conduct business and financial transactions, among others, are examples of its convenience, but also of its seriousness. Identity and account theft, including digital identity theft, are some of the main problems citizens and State security bodies are currently facing. In Puerto Rico, both federal and state agencies are addressing the rise in cybercrime, which suggests that opening the door for innovation and modern technology must be accompanied by effective security mechanisms.

In view of the foregoing, this Bill seeks to require that every player's initial registration be conducted in person at a location authorized as Principal Operator prior to placing a bet. After the initial in-person registration at any Licensed Principal Operator, the player shall be authorized to place his bet through his preferred method within the options allowed.

It is imperative that the Government ensure feasibility and implement effective mechanisms to support the economic growth of the sports betting and eSports industry in Puerto Rico. At a time in which Puerto Rico faces a fiscal dilemma, it is essential to promote capital investment in Puerto Rico that not only creates jobs, but also boosts a similar cost structure.

The experiences of other countries allow us to draft progressive and robust legislation that also prevents the problems that others faced. The safety of our citizens, our youths in particular, is this Government's priority and cannot be placed at risk under any circumstances. On the other hand, the need to incentivize our economy is undeniable, urgent, and non-delegable. Current and future generations make a valid demand for justice we cannot relegate; they seek, as we do, a genuine route to progress for all Puerto Ricans. That is the only way we shall be able to achieve a true quality of life for our People.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 1.3 of Act No. 81-2019, known as the "Government of Puerto Rico Gaming Commission Act," is hereby amended to read as follows:

"Section 1.3.- Definitions.

For purposes of this Act, the following terms and phrases shall have the meaning stated below:

- (1) ...
- (2) ...

(3) ‘Sports Betting’ - means the business of accepting bets, in cash or cash equivalent, on any Sports Event or on the individual performance of individuals participating in a Sport Event or eSports, or a combination thereof, or a Special Event authorized by the Commission, by any method or system of betting. This includes, but is not limited to, any in-person communication, kiosks, and self-service betting stations located in an authorized facility, or online. The term does not authorize bets on Sports Events designed for players under the age of eighteen (18). Betting on Sports Events held by educational institutions at elementary, middle, and high-school level are not authorized either.

...

(4) ...

(5) ‘Code’ - means the Internal Revenue Code for a New Puerto Rico, Act No. 1-2011, as amended, or any other subsequent law that substitutes it.

(6) ‘Commission’ - means the Puerto Rico Gaming Commission.

(7) ‘Fantasy Contests’ - means online games where participants assemble virtual teams of real players of a professional sport. These teams compete against each other based on the statistical performance of those players in actual games for a specific period.

(8) ‘Executive Director’ - means the Executive Director of the Government of Puerto Rico Gaming Commission.

(9) ‘eSports’ - means organized video game competitions where individual competitors, from different leagues or teams, compete against each other in popular games of the video game industry. There are three (3) modalities:

...

(10) ‘Sports Event’ - means any professional Sports Event, athletic event, or collegiate or varsity sport as well as any Sports or athletic event recognized by a sports governing body. For the purposes of this Act, the term ‘Sports Event’ may

include, but shall not be limited to, other types of events or contests authorized by the Commission; provided, that the winner is determined in real time.

The term ‘Sports Event’ excludes:

(a) horse racing events regulated under Act No. 83 of July 2, 1987, as amended, known as the ‘Puerto Rico Horse Racing Industry and Sport Act.’

(b) electronic lottery games, drawings, or contests by virtue of Act No. 10 of May 24, 1989, as amended, known as the ‘Act to Authorize the Additional Lottery System’;

(c) ...

(d) ...

(11) ‘Collegiate or Varsity Sport Event’ - means a Sport or athletic event offered or sponsored by, or played in relation to a public or private institution that offers Higher Education services.

(12) ‘Special Events’ - means any game or event that generates sports bets, including, but not limited to, eSports and Fantasy Games, the duration of which does not exceed thirty (30) days. The Commission may authorize events and contests, whether or not they are sports related; provided, that the winner is determined in real time. The Commission shall ensure a safe environment for all parties involved in the industry in order to prevent tax evasion, money laundering, and any other criminal conduct classified as such under the corresponding statutes. The term does not authorize betting on Special Events designed for players under the age of eighteen (18). Betting on Special Events held by educational institutions at elementary, middle, and high-school level is not authorized either. This definition does not include Traditional Lottery or Additional or Electronic Lottery, which shall be regulated by the Department of the Treasury.

(13) ...

(14) ...

(15) ‘Authorized Player’ - means an individual, age 18 or older, whose identity was authenticated and registered in person at an authorized location with an Operator license. Once authorized and registered, the player may place bets at any authorized location or online.

(16) ‘Operator’ - means an entity with a franchise authorized through a license issued by the Commission to accept sports bets placed either in person within an authorized location or through a sports betting application and to pay out winnings, within the territorial limits of Puerto Rico, in compliance with the state and federal legal framework. The term Operator shall also include: (a) a Principal Operator that, through a Sports Betting Administration Agreement, could offer services to other license holders to operate as Branches; and (b) an Online Betting Operator that, through a license issued by the Commission, is authorized to accept Online Sports Bets and pay out winnings, within the territorial limits of Puerto Rico, in compliance with the state and federal legal framework. The Commission shall prescribe through regulations the number of sites that each Betting Operator may offer.

(17) ...

(18) ‘Technology Platform Provider’ - means an entity holding a license issued by the Commission to provide betting software and hardware where they reside. The Technology Platform Provider that renders services to an Operator in Puerto Rico may not be an Operator in Puerto Rico.

(19) ...

(20) ‘Point of Sale or Branch’ - means an authorized location licensed as a point of sale by the Commission to accept sports bets on behalf and as a branch of the Principal Operator and to pay out winnings to bettors authorized thereto. In order to be authorized, every branch or point of sale must be evaluated by the

Commission and comply, independently from the Principal Operator, with the parameters established in Sections 2.3 and 3.4 of this Act.”

Section 2.- Section 2.1 of Act No. 81-2019 is hereby amended to read as follows:

“Section 2.1.- Commission.

A Commission to be known as the ‘Government of Puerto Rico Gaming Commission’ (hereinafter, ‘the Commission’) is hereby created. The Commission shall be an agency of the Government of Puerto Rico. It shall be composed of seven (7) commissioners of which five (5) shall be ex officio members, to wit: the Secretary of the Department of Economic Development and Commerce; the Executive Director of the Tourism Office of the Department of Economic Development and Commerce; the Secretary of the Sports and Recreation Department; the Administrator of the Mental Health and Anti-Addiction Services Administration; the Government’s Chief Information Officer; and two (2) members who shall be persons from the private sector appointed by the Governor with the advice and consent of the Senate, who shall be persons of recognized personal, moral, and professional integrity, and who are neither engaged in any businesses, activities nor have any interests in the Puerto Rico gambling industry. In the interest of optimizing the initial economic development that this industry represents for Puerto Rico, the Commission shall meet once a month during the first two years after the effective date of this Act. The determinations of the Commission shall be made by a majority of the members present, but four (4) members of the Commission shall constitute a quorum. However, if a vacancy occurs among the members of the Commission, a quorum shall consist of one half plus one (1) of the members in office. The ex officio members of the Commission shall discharge their duties without any compensation whatsoever. The two (2) members from the private sector appointed by the Governor shall be entitled to a

per diem to be determined by the Commission. Such members shall also be entitled to receive the established per diems when they attend official events or activities as representatives of the Commission. The per diem shall be established by the Commission, but it shall never exceed one hundred and fifty dollars (\$150.00) per day. All of the commissioners shall be entitled to be reimbursed for any necessary expenses incurred in the discharge of their duties. The Commission shall be chaired by the Secretary of the Department of Economic Development and Commerce. The members of the Commission appointed by the Governor shall hold positions of trust, and thus, may be removed by the Governor at any time. It is hereby provided that the members of the Commission shall be subject to the provisions of Act No. 1-2012, as amended, known as the ‘Organic Act of the Puerto Rico Government Ethics Office.’”

Section 3.- Section 2.3 of Act No. 81-2019 is hereby amended to read as follows:

“Section 2.3.- Special Powers of the Commission Relating to Bets on Sport Events, eSports and Fantasy Contests.

The Commission shall have all the powers deemed necessary or convenient to achieve the purposes and enforce the provisions of this Act, including but not limited to, the following:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) ...

(9) ...

(10) ...

(11) ...

(12) ...

(13) ...

(14) To establish the necessary parameters to ensure that no person under eighteen (18) years of age participates in betting through regulations as are necessary to protect and prevent game addition. The regulatory provisions shall include the following:

a) No sports betting message should be designed to appeal primarily to those below the legal age for sports betting.

b) No message should suggest or imply that underage persons engage in sports betting.

c) No message shall promote irresponsible or excessive participation in sports betting.

d) Messages placed in digital media, including internet and mobile sites, commercial marketing emails, text messages, social media sites, and downloadable content, should include a link to a site that provides information about responsible gaming and the help available to address compulsive gambling problems.

e) Every principal operator and authorized branch shall provide visitors with information about responsible gaming and where to find help, including the Mental Health and Addiction Services Administration (ASSMCA, Spanish acronym) hotline. This information shall be available and publicly displayed. Likewise, it shall be available on their website, social media pages, and other advertising mediums allowed by Law.

f) Employees of Principal Operators and licensed Branches shall receive recurring training on gambling disorders and problems, as well as on how to identify compulsive players that frequently visit such locations. The frequency of such training shall be prescribed through regulations. Likewise, employees shall be informed about their duty to prohibit minors under the age of eighteen (18) from accessing the gaming area, betting systems, as well as, purchasing or consuming alcohol at the facility. Employees who fail to receive the training required by regulations shall be unable to renew their license to work in betting facilities on the branches thereof.

g) Every Principal Operator or Branch authorized to accept sports bets and pay out winnings, which also includes the service and sale of alcohol, shall ensure that employees are trained with regards to responsible alcohol service policies and shall offer periodic training to such employees, pursuant to regulations; and

(15) Any other matter that, in the judgment of the Commission, should be regulated. However, all regulations shall raise public awareness about sports betting as an entertainment activity that is only for adults who can adhere to sound and responsible gaming practices. The Commission is hereby directed to ban any publicity and marketing strategy that is contrary to these principles.”

Section 4.- Section 2.8 of Act No. 81-2019 is hereby amended to read as follows:

“Section 2.8.- Lists to be Kept by the Commission.

The Commission shall keep an updated list of all natural or juridical persons that are banned from obtaining any type of license issued by the Commission, as provided in this Section and Section 3.4. Likewise, the Commission shall keep a list of all natural persons who are banned from participating in sports betting, as provided in Section 3.12.

...

These lists shall be updated daily and must include the social security number or employer identification number and/or any other information that helps duly identify such persons. To these ends, the Commission shall prescribe by regulations the process to include a natural and/or juridical person in these lists and the process for them to have their names removed therefrom, among others.

...”

Section 5.- Section 3.1 of Act No. 81-2019 is hereby amended to read as follows:

“Section 3.1.- Betting Authorization.

Betting on any professional sport or, any collegiate or varsity sport, Olympic or international sports event, or any part thereof, including, but not limited to the individual performance statistics of athletes or teams in a Sports Event or a combination thereof is hereby authorized. However, betting on Sports Events designed for players under the age of eighteen (18) is not authorized. Betting on Sports Events held by educational institutions at the elementary, middle, and high-school levels is not authorized either.

...

...”

Section 6.- Section 3.2 of Act No. 81-2019, known as the “Government of Puerto Rico Gaming Commission Act,” is hereby amended to read as follows:

“Section 3.2.- Authorized Locations.

Bets on events authorized by this Chapter may be placed in-person at casinos, hotels without casinos, *paradores*, off-track betting locations, cockpits, and any other location which the Commission determines provides security for all parties engaged in this industry in order to prevent tax evasion, money laundering, and any other criminal conduct classified as such under the corresponding statutes.

For purposes of this Act, casinos and racetracks shall not be considered Branches; whereas hotels without casinos, *paradores*, racetracks, off-track betting locations, and cockpits may be considered as Branches. The Commission may authorize the holding of Special Events, as they are defined in subsection (11) of Section 1.3 of this Act. The Commission shall not authorize new locations under the following circumstances: (1) using criteria based on a particular business industry; or (2) if the new location is located within less than one hundred (100) meters of a school, place of worship, or public or private drug or alcohol rehabilitation facility. However, if all these places consent in writing to the establishment of a point of sale or branch, the Commission may grant an authorization under the conditions it deems necessary so that all establishments may carry out their activities. The Commission is also hereby authorized to establish mechanisms that only allow persons within the territorial limits of Puerto Rico to engage in online or internet betting from computers, or mobile or interactive devices that accept bets through an online gaming system for betting on sport events and eSports; provided, that measures are implemented to ensure the security of all parties involved in this industry; and prevent tax evasion, money laundering and/or any other criminal conduct. The Commission shall require the use of border control technologies to ensure that bets are placed within the territorial limits of Puerto Rico. All points of sale and mobile applications or websites shall be accessible to persons with disabilities.”

Section 7.- Section 3.3 of Act No. 81-2019 is hereby amended to read as follows:

“Section 3.3.- Location of the Operations of an Online Gaming License Holder.

An entity holding a license to accept online bets on the games authorized under this Chapter, from persons who are within the territorial limits of Puerto

Rico shall establish its main gaming operations in a location authorized by the Commission and which meets the security standards established by the Commission, in accordance with acceptable standards or parameters of the gaming industry and regulatory entities throughout the United States. The backup systems and servers used pursuant to the rules established by the Commission to place bets on authorized online games may, with prior approval of the Commission, be located in a different location within the territorial limits of Puerto Rico. An Operator holding a license to accept Online bets shall maintain at least one location licensed as Principal Operator to receive bets in person, as well as to provide customer services and handle players' claims.

...”

Section 8.- Section 3.9 of Act No. 81-2019 is hereby amended to read as follows:

“Section 3.9.- Authorized Players.

Only persons who are eighteen (18) years of age or older may play. In order to verify whether a player is a minor, the Commission shall be required to take measures as necessary to ensure the identity of the player and that the player is eighteen (18) years old. The Commission shall employ the most advanced technology for such purpose and prescribe suitable parameters to ensure the authentication of the player, including, but not limited to, verifying his identification and social security. Likewise, the Commission may implement tools to assess the financial capacity of the applicant so as to be able to limit the number of bets he may place based on his income. The holder of any license issued by the Commission shall be required to implement strict controls to deny access to persons under the age of eighteen (18).

Provided, further, that prior to placing a Sports Bet, whether in person or online, the player must register in person at any location authorized as Principal

Operator. Registration constitutes an essential requirement for placing bets in any online system, Principal Operator, or branches or points of sale, except for participating in fantasy contests. The register shall have strict controls to prevent individuals under the age of 18 from registering.”

Section 9.- Section 3.12 of Act No. 81-2019 is hereby amended to read as follows:

“Section 3.12.- Ban on Engaging in Sports Betting.

Any person from Puerto Rico, the United States, or abroad who is recognized as a professional athlete, trainer or referee, or the director of a sports governing body or of any member team thereof, a sports governing body or any member team thereof, or a player or referee who is a staff member in any Sports Event supervised by the sports governing body; a person who holds a position of authority or influence sufficient to exercise it over the participants of a tournament or Sports Event, including, among others, trainers, managers, agents, athletic trainers or sports trainers in general; a person with access to certain types of privileged information about a Sports Event, as defined in Section 1.3 of this Act; or a person identified in any list provided by a sports governing body in Puerto Rico shall be prohibited from betting on a Sports Event from which said person may benefit, or of which said person may have privileged information, or in any other event identified by the Commission. Any employee of a sports governing body or of a member team thereof who is not banned from betting on a Sports Event shall, however, notify the Commission prior to betting on Sports Events. The direct, indirect, or legal owner or beneficiary of a sport governing body or of any member team thereof shall not place any bet on a Sports Event in which a member team of such governing body is participating. The Commission shall keep an updated list of all persons banned from engaging in sports betting as provided in the preceding paragraph and subject to the provisions of Section 2.8 of this Act.

Authorized Agents or Operators shall maintain records of the sports betting operations in accordance with the regulations promulgated by the Commission.”

Section 10.- Section 3.13 of Act No. 81-2019 is hereby amended to read as follows:

“Section 3.13.- Tax on Bets Allowed by this Chapter.

Any Operator and/or point of sale or branch with a valid license issued by the Commission under this Act shall be subject, in lieu of any other tax provided in the Code or any other law, to the fixed rate established in this Section with regards to sports and eSports bets placed in accordance with this Act. Provided, that any income of the Operator and/or point of sale or branch other than from sports and eSports bets placed pursuant to this Act shall be subject to the provisions of the Code or applicable tax law.

The State shall impose and collect from the Operator and/or point of sale or branch a tax at the rate of seven percent (7%) on the gross receipts of any Sports and eSports bets placed in person.

The State shall impose and collect from the Operator and/or point of sale or branch a tax at the rate of twelve percent (12%) on the gross receipts of sports and eSports bets placed online.

Gross receipts shall be determined by subtracting the winnings paid by a license holder to winning players from the total gross receipts received by a license holder. The accounting and payment methods as well as the frequency of payment shall be determined by the Commission, in consultation with the Secretary of the Treasury.

No amount paid by the player on account of sports and eSports bets placed under this Act, which transactions shall be subject to the tax provided in this Section, shall be subject to the sales and use tax established in Subtitles D and DDD of the Code.”

Section 11.- Section 7.7 of Act No. 81-2019 is hereby amended to read as follows:

“Section 7.7.- Effectiveness Clause.

This Act shall take effect upon its approval. However, it is hereby provided that bets authorized under this Act shall begin upon the constitution of the Government of Puerto Rico Gaming Commission, the regulation of the new authorized games, and the issuance of the appropriate licenses. The amendments of this Act, contained in Chapter V, to Act No. 221 of May 15, 1948, as amended, known as the ‘Games of Chance and Gambling Devices in Casinos Authorization Act,’ shall become effective on the effective date of this Act. The effectiveness of this Act shall not be affected by the effectiveness clause of Section 17.3 of Act No. 141-2018, as amended, known as the ‘Department of Economic Development and Commerce Reorganization Plan Enforcement Act of 2018.’ All amendments contained in Act No. 141-2018 to the provisions of Act No. 221 of May 15, 1948, as amended, known as the ‘Games of Chance and Gambling Devices in Casinos Authorization Act,’ that are not inconsistent with this Act shall become effective on the effective date thereof.”

Section 12.- Effectiveness.

This Act shall take effect upon its approval.